STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Court of Appeals
Whitbeck, C.J., and Jansen and Markey, JJ.

MARY BAILEY,

Plaintiff-Appellee,

v

OAKWOOD HOSPITAL AND MEDICAL CENTER,

Defendant-Appellant,

and

SECOND INJURY FUND (VOCATIONALLY HANDICAPPED PROVISION)

Defendant-Appellee,

and

CRAIG R. PETERSEN
INTERIM DIRECTOR OF THE WORKERS' COMPENSATION AGENCY,

Intervenor-Appellee.
_____/

SUPREME COURT
No. 125110

COURT OF APPEALS
No. 243132

WCAC Docket
No. 01-000076

BRIEF ON APPEAL OF INTERVENOR-APPELLEE THE DIRECTOR OF THE WORKERS' COMPENSATION AGENCY

ORAL ARGUMENT REQUESTED

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Dated: November 4, 2004

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QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals correctly conclude that the Worker's Compensation Appellate Commission erred as a matter of law in holding that because Oakwood was not entitled to reimbursement from the Second Injury Fund it did not have to pay on-going benefits to plaintiff?

Plaintiff-Appellee answers "Yes."

Intervenor-Appellee Director of the Workers' Compensation Agency answers "Yes."

Defendant-Appellant Oakwood Hospital and Medical Center answers "No."

Defendant-Appellee Second Injury Fund answers "Yes."

The Court of Appeals answers "Yes."

The WCAC answers "No."

COUNTER-STATEMENT OF PROCEEDINGS AND FACTS

The Interim Director of the Worker's Compensation Agency (hereafter "Director") is specifically empowered to seek intervention in any case involving worker's compensation benefits by MCL 418.841(1), which provides that "[t]he director may be an interested party in all worker's compensation cases in questions of law." This case involves interpretation of the provisions of MCL 418.901, *et. seq.*, *i.e*, "Chapter 9" of the Worker's Disability Compensation Act. Chapter 9 deals with vocationally disabled people who enter or re-enter the workplace. By order dated March 28, 2003 [Appendix b], the Court of Appeals granted the Director's request to intervene in this case.

In the order granting leave to appeal, dated July 8, 2004, this Court directed the parties to address the issue of payment of benefits after 52 weeks from the injury date, based on the relevant statutes. The Director's only interest in this case is to urge this Court to affirm the Court of Appeals' holding in *Bailey v Oakwood Hosp & Medical Center*, 259 Mich App 298; 674 NW2d 160 (2003), that plaintiff-appellee, Mary Bailey (hereafter "plaintiff"), is entitled to on-going worker's compensation benefits regardless of which entity is ultimately found liable for payment of those benefits.

In addition to the above statements, the Director adopts the Statement of Facts set out on pages 1-3 in the brief filed in this case by Amicus Curiae Munson Hospital.

ARGUMENT

The Court of Appeals' decision, reversing the WCAC's conclusion that because Oakwood was not entitled to reimbursement from the Second Injury Fund (Vocationally Handicapped Provision) it did not have to pay ongoing benefits to plaintiff, is supported by the facts and the law and should be affirmed.

A. Standard of review

Issues of law are reviewed *de novo*. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991); *McKenney v Crum & Forster*, 218 Mich App 619, 622; 554 NW2d 600 (1996).

B. Relevant statutory provisions

1. MCL 418.301(1):

An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act. [emphasis added]

2. MCL 418.921:

A person certified as vocationally disabled who receives a personal injury arising out of and in the course of his employment and resulting in death or disability shall be paid compensation in the manner and to the extent provided in this act, or in case of his death resulting from such injury, the compensation shall be paid to his dependents. The liability of the employer for payment of compensation, for furnishing medical care or for payment of expenses of the employee's last illness and burial as provided in this act shall be limited to those benefits accruing during the period of 52 week after the date of injury. Thereafter, all compensation and the cost of all medical care and expenses of the employee's last sickness and burial shall be the liability of the fund. The fund shall be liable, from the date of injury, for those vocational rehabilitation benefits provided in § 319. [emphasis added]

3. MCL 418.351(1):

While the incapacity for work resulting from a personal injury is total, the employer shall pay, or cause to be paid as provided in this section, to the injured employee, a weekly compensation of 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate of compensation, as determined under section 355. Compensation shall be paid for the duration of the disability. [emphasis added]

4. **MCL 418.361(1):**

Compensation shall be paid for the duration of the disability. [emphasis added]

C. Discussion and analysis

This workers' compensation case involves interpretation of the provisions of MCL 418.901, *et. seq.*, *i.e*, "Chapter 9" of the Act. Chapter 9 deals with vocationally disabled people who enter or re-enter the workplace, and was designed to encourage employment of people with specific ailments who have difficulty securing employment. MCL 418.901(a) describes a "vocationally disabled" person as one "who has a medically certifiable impairment of the back or heart, or who is subject to epilepsy, or who has diabetes, and whose impairment is a substantial obstacle to employment . . . ." Chapter 9 provides relief to the employer if a worker with such a handicap is subsequently injured, provided the employer has followed specific procedures. If those requirements are met, the defendant-appellee Second Injury Fund (Vocationally Handicapped Provision) (hereafter "Fund") may be liable for reimbursement to the employer for all benefits paid after 52 weeks from the injury date. MCL 418.901, *et. seq*. If they are not met, then §§ 351 or 361 obligate the employer to pay benefits for the duration of the disability. There is nothing in Chapter 9 that says an employer's liability ends 52 weeks from the injury date if it failed to follow the procedures to qualify for Chapter 9 relief. It is this issue alone that the Director will address in this brief. The Director is not taking a position as to whether there was proper notice to the Fund.

It is the Director's position that the Court of Appeals correctly held that the WCAC erred as a matter of law in concluding that plaintiff was not entitled to any benefits after one year from the injury date. The WCAC's decision rewarded an employer for failing to carry out its statutory duty, and punished an innocent party in the process, and was correctly reversed.

To summarize, the major issues to be decided by the magistrate were whether plaintiff's benefits were properly terminated based on "work-avoidance," and whether Oakwood Hospital and Medical Center (hereafter "Oakwood") was entitled to reimbursement from the Fund. The parties had stipulated that plaintiff had a work-related disability. Records presented established that plaintiff was a certified handicapped worker, due to a prior back injury.

The Fund brought a motion before the magistrate for dismissal based on lack of the required statutory notice, which the magistrate granted in a decision mailed October 4, 1999. The magistrate found that Oakwood was not entitled to reimbursement from the Fund pursuant to Chapter 9 because it did not provide timely notice to the Fund as required by MCL 418.925(1). Oakwood appealed the decision to the WCAC, and in an opinion and order dated May 26, 2000, the WCAC found that the magistrate erred in dismissing the Fund, and remanded the case to the magistrate so that the Fund could again be included as a party.

While the case was pending on remand to the magistrate, the decision in *Robinson v General Motors,* 242 Mich App 331; 619 NW2d 411 (2000); *lv den* 463 Mich 975 (2001), was published. On January 29, 2001 the magistrate issued his decision, concluding that, based on MCL 418.925(1) and the *Robinson* decision, the Fund had not had timely notice, and therefore Oakland was not entitled to reimbursement. That decision was appealed to the WCAC.

The WCAC issued its decision July 18, 2002. The WCAC held that, under the *Robinson* analysis the magistrate's decision about lack of notice was correct, and that Oakwood was not entitled to reimbursement from the Fund. This conclusion is consistent with the decisions in *Robinson v General Motors, supra*, and in *Valencic v TPM,* 248 Mich App 601; 639 NW2d 846 (2001); *lv den* 467 Mich 917 (2002), *reconsideration den* 658 NW2d 491 (2003). However, the WCAC went on to add that, as a matter of law, "[p]laintiff's liability for wage loss and medical

benefits ends on September 21, 1995." (Presumably, the "plaintiff" WCAC refers to is in fact Oakwood.) While this reference may be confusing, the WCAC's ruling is clear. The WCAC held that -- because it was found that Oakwood failed to timely notify the Fund about plaintiff's ongoing disability, and therefore did not qualify for Chapter 9 reimbursement from the Fund -- all weekly benefits to plaintiff ended one year from her injury date.

The Court of Appeals correctly determined that the WCAC erred as a matter of law in reaching this conclusion. A textualist approach requires construction which correlates with the Worker's Disability Compensation Act as a whole. Textualism seeks a statutory construction that is "most compatible with the surrounding body of law into which the provision must be integrated." *Green v Bock Laundry Machine Co*, 490 US 504, 528; 109 S Ct 1981; 104 L Ed 2d 557 (1989) (Scalia, J., concurring). There is nothing in the Act that supports termination of an injured employee's benefits based on failure of the employer to take a required action.

MCL 418.301(1) states that "[a]n employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act."

MCL 418.351(1), which deals with compensation for total disability, states:

> While the incapacity for work resulting from a personal injury is total, the employer shall pay, or cause to be paid as provided in this section, to the injured employee, a weekly compensation of 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate of compensation, as determined under section 355. Compensation shall be paid for the duration of the disability. [emphasis added]

MCL 418.361(1), which deals with compensation for partial disability, in relevant part, states: "Compensation shall be paid for the duration of the disability."

An employer cannot avoid its obligation to pay benefits for work-related injuries by failing to follow the statutory procedure necessary to qualify for reimbursement from the Fund.

Contrary to the position taken by Oakwood, § 921 does not justify terminating plaintiff's benefits if the employer fails to provide the required notice to the Fund. The first sentence of § 921 states: "A person certified as vocationally disabled who receives a personal injury arising out of and in the course of his employment and resulting in death or disability shall be paid compensation in the manner and to the extent provided in this act, or in case of his death resulting from such injury, the compensation shall be paid to his dependents." Oakwood ignores this sentence, and focuses on the second sentence in § 921, which deals with division of liability for payment of those benefits between the employer and the Fund. The Director concurs with Amicus Curiae Munson Hospital that the purpose of the provisions of § 921 and § 925(1) of the Act are entirely different. There is nothing in the language of § 921 that justifies terminating benefits after one year to this employee. And § 925(1) – the "notice" provision, does not limit the injured employee's right to compensation based on the notice issue, as Oakwood claims.

Finally, the WCAC cited *Robinson v General Motors*, *supra*, as support for its holding in reaching its conclusion that plaintiff was limited to one year of benefits. However, in *Robinson* the Court did not absolve the employer from its obligation to pay the plaintiff. The WCAC's conclusion that plaintiff would receive no benefits after one year following the injury date because Oakwood did not qualify for reimbursement from the Fund under Chapter 9 was contrary to the law, produced an absurd result, and was properly reversed by the Court of Appeals.

D. Conclusion.

The Court of Appeals correctly held that the WCAC erred as a matter of law in its holding that Oakwood's "liability for wage loss and medical benefits ends on September 21, 1995." The Court of Appeals correctly reversed the WCAC's decision on this issue. As stated in *Maier v General Telephone Co*, 247 Mich App 655, 660; 637 NW2d 263 (2001); *lv den* 466 Mich 879 (2002):

> Although this Court will ordinarily defer to the WCAC's interpretation of a provision of the [Act], MCL 418.101 *et seq.*, we will not afford such deference where the WCAC's interpretation of the pertinent statute is clearly incorrect. Likewise, " 'a decision of the WCAC is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework.' ". . . *Id* at 660 [emphasis added; citations omitted]

In addition to the legal error which required correction, the decision of the WCAC was contrary to the Legislative intent in workers' compensation cases to provide speedy resolution and relief for injured workers found to have a compensable disability. *McAvoy v H B Sherman Co*, 401 Mich 419, 437; 258 NW2d 414 (1977).

RELIEF SOUGHT

WHEREFORE, for the reasons set out herein, the Director asks this Court to affirm the Court of Appeals' conclusion that plaintiff was entitled to on-going benefits, reversing the WCAC's finding that Oakwood's liability to pay plaintiff benefits ended one year after the injury date.

Respectfully submitted,

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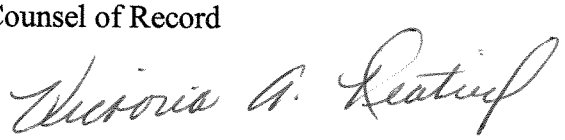

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